

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BARRY D. GIVENS, SR.,

Plaintiff,

v.

EDDIE DEEN & CO. CATERING,

Defendant.

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Civil Action No. **3:10-CV-1164-L**

ORDER

Before the court are the Findings, Conclusions and Recommendation With Respect to Whether Plaintiff's Final Amended Complaint States A Claim, filed April 14, 2011 ("Report"). Plaintiff Barry D. Givens ("Plaintiff" or "Givens") filed timely objections on April 27, 2011.

Plaintiff brings this suit pursuant to 42 U.S.C. § 2000e. Plaintiff filed his Original Complaint on June 11, 2010. Defendant filed a Motion to Dismiss Plaintiff's Complaint on October 25, 2010. Plaintiff filed his Amended Complaint on November 17, 2010. Defendant then filed a Motion to Dismiss Plaintiff's Amended Complaint on November 23, 2010. Plaintiff filed a Second Amended Complaint and Response to Motion to Dismiss on November 24, 2010. Defendant then filed a Motion to Dismiss Plaintiff's Second Amended Complaint on November 30, 2010. The magistrate judge issued a report on December 30, 2010, recommending that the District Court deny without prejudice Defendant's October 25, 2010, November 23, 2010, and November 30, 2010, motions to dismiss and allow Plaintiff to file a final amended complaint. On January 10, 2011, Plaintiff filed a Final Amended Complaint. Defendant filed a Motion to Dismiss Plaintiff's Final Amended Complaint on January 11, 2011. The court accepted the December 30, 2010 report of the magistrate

judge and instructed Plaintiff to file a final amended complaint by March 17, 2011. On February 18, 2011, the magistrate judge recommended that the court grant Defendant's December 30, 2011 motion and dismiss Plaintiff's claims with prejudice. On March 9, 2011, Plaintiff filed an Amended Complaint. Defendant filed a Motion to Dismiss Plaintiff's Amended Complaint on March 21, 2011. The magistrate judge filed a March 31, 2011 report recommending that this court dismiss Plaintiff's March 9, 2011 Amended Complaint with prejudice. On April 5, 2011, the court issued an order recommitting this matter to the magistrate judge as to whether the Complaint filed on January 10, 2011, stated a claim upon which relief can be granted.

On April 14, 2011, the magistrate judge made specific findings and recommended that Plaintiff's January 10, 2011 Final Amended Complaint be dismissed with prejudice for failure to comply with the pleading requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure. The magistrate judge concluded that Plaintiff's pleadings are deficient because he only makes conclusory allegations that he was discriminated against because of his race. The magistrate judge further concluded that the facts alleged by Plaintiff cannot plausibly infer that Defendant's employer terminated him based upon his race in violation of 42 U.S.C. § 2000e.

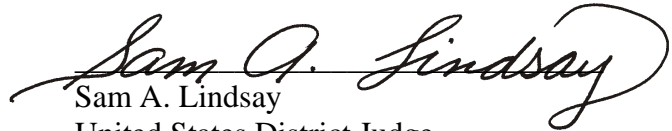
Plaintiff objects to the Report, contending that he has complied with the pleading requirements of Rule 8(a)(2). Plaintiff states that "[o]ver a short period of time[,] Eddie Dean & Co., Inc. restructured its employment system to where he would only hire . . . illegal immigrants as [Defendant] rid [itself] of black and . . . employees for frivolous reasons." Pl.'s Obj. at 1. Plaintiff further states that he should be allowed discovery to build his claim. *Id.* at 2.

Plaintiff fails to show that he is entitled to relief. Plaintiff's assertion that Defendant restructured its company to hire illegal immigrants and then fired black employees for frivolous

reasons is insufficient to infer discrimination under 42 U.S.C. § 2000e. Further, Plaintiff is not entitled to further discovery, as he has filed four amended complaints in this action. Plaintiff has had ample time to develop his case. Accordingly, Plaintiff's objection is **overruled**.

The court has reviewed the Report, Plaintiff's Objection, the record, and the applicable law, and determines that the findings and conclusions are correct. They are therefore **accepted** as those of the court. The court **grants** Defendant's Motion to Dismiss Plaintiff's Final Amended Complaint, filed March 21, 2011, and this action is **dismissed with prejudice** for failure to state a claim upon which relief can be granted.

It is so ordered this 29th day of April, 2011.


Sam A. Lindsay
United States District Judge